

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,) NO. 60541-1-I
)
Respondent,)
)
v.) UNPUBLISHED OPINION
)
NIKITA SERGEYEVICH MOROZOV,)
)
Appellant.) FILED: June 15, 2009

BECKER, J. — While investigating a dispatch to a knife fight disturbance involving two men, a police officer observed two possible suspects yelling and gesturing while standing outside of the passenger side of a parked car. When the officer called them over, one suspect ran and the other complied. The remaining suspect told the officer that the man in the car had a gun. The trial court did not err in concluding that these facts either (1) supported a reasonable, articulable suspicion that the man in the passenger seat of the car was involved in the original disturbance; or (2) made officer safety an objectively reasonable

concern. In either case, the officer's decision to remove the occupants of the car and frisk them for weapons was justified. We therefore affirm the conviction of the passenger, Nikita Morozov, for unlawful possession of a firearm.

FACTS

The State charged Nikita Morozov with unlawful possession of a firearm in the second degree. Morozov moved to suppress the firearm police found in his waistband. Following a CrR 3.6 hearing, the trial court entered written findings of the following undisputed facts:

- a. On May 11, 2006, Seattle Police Officers Robert Burk and Karen Pio responded to a dispatch of a knife-fight disturbance involving two white males wearing white shirts and standing outside of a restaurant at North 67th and Greenwood Avenue North.
- b. When Officer Burk arrived on the scene, two men (Sean Colville and Nicholas Mayer) wearing white t-shirts, one of which was ripped, were standing outside of the passenger side of a car parked on the street. Colville and Mayer were yelling and gesturing. Officer Burk radioed that he had "two possibles."
- c. Officer Burk ordered Colville and Mayer to come over and talk to him.
- d. Mayer turned and ran away. Colville complied with Officer Burk's command.
- e. Officer Burk ordered Colville to get on the ground. Colville did so. Colville then told Officer Burk that the guy in the car had a gun.
- f. Officer Pio arrived at the scene in time to see Mayer running away. She pursued and caught up to him.
- g. Officer Pio grabbed Mayer, who then became compliant. Officer Pio saw a knife on Mayer and patted him down for other weapons, finding none.
- h. While Officer Pio detained Mayer, she could hear Officer Burk yelling at someone to put his hands up. As Officer Pio led Mayer to her car, Mayer told her the guy in the car had a gun.
- i. When Colville told Officer Burk the guy in the car had a gun, Officer Burk called for backup, drew his firearm, and told the occupants of the car to put their hands in the air.
- j. Officer Pio returned to the

scene.

- k. [No "k" in original document.]
- l. Officer Burk ordered the person on the driver's side (Japhet Oram), a female, to get out of the car. As Oram did, she stated that neither she nor the passenger had a gun.
- m. Officer Pio ordered the defendant, a white male who was seated in the passenger seat, to get out of the car and walk backwards towards her with his hands up over his head.
- n. Officer Pio ordered the defendant down on his knees, grabbed hold of his hands, and asked him where the gun was. The defendant told her the gun was on his left side under his coat.
- o. Officer Pio removed a handgun (9mm Smith & Wesson) from the defendant's waistband.

The trial court made the following conclusions of law:

The 9mm Smith & Wesson is admissible as the fruit of a permissible weapons frisk conducted by Officer Pio for officer safety. At the time Officer Burk arrived on the scene he had limited information about who was involved in the knife fight disturbance he had been dispatched to investigate. While he may have initially believed Mayer and Colville were the combatants, he did not have time to confirm or dispel the suspicion before Colville told him the guy in the car (the defendant) had a gun. The defendant was the only male in the car. It was reasonable at that point for Officer Burk to believe the defendant was involved in the original altercation. Moreover, the information also gave him a reasonable officer safety concern that the defendant may have been armed, both because Colville told him he was and because the initial dispatch reported a weapon was possibly involved. Officer Burk properly seized the defendant by ordering him at gunpoint to put his hands in the air. Officer Pio, who had received the same information that the defendant was armed with a gun from Mayer, first asked the defendant where the gun was and then removed it from his waistband after the defendant told her it was there. State v. Franklin, 41 Wn. App. 409, 704 P.2d 666 (1985) supports the court's decision to admit the recovered firearm into evidence.

After a stipulated facts bench trial, the court found Morozov guilty as charged and imposed a standard

range sentence. Morozov appeals.

DISCUSSION

Because Morozov does not challenge the trial court's findings of fact, they are verities on appeal. State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). We review the trial court's conclusions of law de novo. State v. Duncan, 146 Wn.2d 166, 171, 43 P.3d 513 (2002).

To justify a Terry stop under the Fourth Amendment and article I, section 7 of the Washington Constitution, a police officer must be able to "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); State v. Day, 161 Wn.2d 889, 168 P.3d 1265 (2007). Without a warrant, an officer may briefly stop and detain a person he or she reasonably suspects has committed or is about to commit a crime. Day, 161 Wn.2d at 896; Terry, 392 U.S. at 21. This suspicion must be individualized, rather than based on mere proximity to others independently suspected of criminal activity. State v. Thompson, 93 Wn.2d 838, 841, 613 P.2d 525 (1980).

To justify a protective frisk for weapons, the officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be

warranted in the belief that his safety or that of others was in danger. Terry, 392 U.S. at 27. Under article I, section 7 of the Washington Constitution, we consider the totality of the circumstances, including the officer's subjective belief. Day, 161 Wn.2d at 896. If the initial stop is not lawful or if the officer's professed belief that the suspect was dangerous was not objectively believable, then the fruits of the search may not be admitted in court. Day, 161 Wn.2d at 895.

Morozov contends that Officer Burk had no individualized, articulable suspicion to justify detaining Morozov when the dispatch referred to only two men involved in a knife fight and Officer Burk saw only Colville and Mayer fighting when he arrived at the scene. Contrary to Morozov's claim, the undisputed facts as found by the trial court do not exclude the possibility of a reasonable suspicion that Morozov was involved in the original "knife-fight disturbance." Nothing in the written findings indicates that Officer Burk observed Colville and Mayer fighting with each other, noticed a knife or any other weapon in their possession, or determined that Colville and Mayer were the only individuals involved in the reported incident when he first arrived on the scene. Instead, Officer Burk described them as *possible* suspects who were "yelling and gesturing" while "standing outside of the passenger side of a car parked on the street." At that point, Officer Burk did not have sufficient information to exclude the occupants of the car as potential suspects. After Mayer ran away and Colville stated that "the guy in the

car had a gun,” Officer Burk had a reasonable basis to suspect that the occupants of the car had some role in the reported disturbance.

Moreover, given the circumstances, Officer Burk was reasonably concerned for his own safety as well as that of other officers and the public. Given the dispatch regarding a disturbance created by a knife fight, the flight of one possible suspect and another possible suspect’s claim that the man in the car had a gun, a reasonably prudent person would have sufficient safety concerns to justify an investigation and a weapons frisk. As this court noted in State v. Franklin, 41 Wn. App. 409, 414, 704 P.2d 666 (1985),

[T]he potential danger to the public posed by an armed individual calls for immediate action, and in such circumstances, the police may forego lengthy and unnecessary questioning of an informant in favor of an immediate investigation.

Under the circumstances of this case, Officer Burk’s decision to seize Morozov and conduct a weapons frisk was justified. The trial court properly denied the motion to suppress the gun.

Affirmed.

Becker, J.

WE CONCUR:

Elemyon, J.

Cox, J.